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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION**

**DERRAL FLEMING**, an individual,  
and **MAG ENTERPRISES, LLC**, a  
Washington company,

Plaintiff(s),

v.

**SCOTT PARNELL**, an individual,  
and **SAMSON SPORTS, LLC**, a  
Washington company,

Defendant(s).

No. \_\_\_\_\_

**COMPLAINT**  
For Declaration of Noninfringement of  
Copyright, Invalidity of Copyright  
Registrations, and Ownership of  
Copyright Registrations Copyright,  
Breach of Fiduciary Duty, Dissolution  
of Partnership, and Equitable Relief

**JURY TRIAL DEMANDED**

COMES NOW Plaintiffs, **DERRAL FLEMING** and **MAG ENTERPRISES, LLC**, and by this Complaint seeks declaratory relief, among other things, against Defendants **SCOTT PARNELL** and **SAMSON SPORTS, LLC** for: (1) Declaration of noninfringement of copyrights; (2) Declaration of invalidity of copyrights; (3) declaration of ownership of copyrights; (4) breach of fiduciary duties, and (5) dissolution of partnership, accounting, and equitable distribution, and alleges as follows:

## JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action. This Court has Federal Question jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 as an action arising under the laws of the United States, including Title 17 of the United States Code relating to copyrights. This action requests, among other things, declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 for the purpose of determining questions of actual controversy between the parties under the Copyright Act, 17 USC. §§ 102(b), 106, and 501, among others..

2. This Court has pendent jurisdiction over the state claims under 28 U.S.C. § 1338(b) in that said claims are joined with substantial and related claims under the Copyright Laws of the United States, Title 17 United States Code. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Pursuant to Rule 9(c), Plaintiffs plead that all acts and conditions precedent for establishing jurisdiction have been performed or have occurred.

3. Venue and personal jurisdiction are proper in this district pursuant to 28 U.S.C. § 1400, 28 U.S.C. § 1391(b) and (c), and, pursuant to FRCP 4, Washington's long arm jurisdictional rules and statutes in that Defendant(s) reside in this district and/or can be found in this district by virtue of their activities, are engaged in substantial and not isolated activities in this district, and engaged in acts in this district and/or injured persons in this district in conjunction with activities carried on within this district by

Defendants and/or in the ordinary course of trade of Defendants.

4. Plaintiffs are informed and believes and on that basis alleges that this Court has personal jurisdiction over Defendants by virtue of Defendants transacting and doing business in this judicial district.

### PARTIES

5. Plaintiff DERRAL FLEMING (hereinafter "Fleming"), is an individual residing in Clark County, Washington.

6. Plaintiff, MAG ENTERPRISES, LLC (hereinafter "MAG"), is a Washington company located in Clark County, Washington. It is owned and operated by Derral Fleming.

7. Defendant, SAMSON SPORTS, LLC (hereinafter "Samson"), is a Washington company having principal place of business on 4325 NW Lake Road, Camas, WA 98607.

8. Defendant, SCOTT PARNELL (hereinafter "Parnell"), is an individual residing in Clark County, Washington. Plaintiffs are informed and believe and on that basis allege that Parnell has complete dominion and control over Samson.

### COMMON ALLEGATIONS OF FACT

9. MAG was established in January, 2006 to develop and sell new products and equipment created by Fleming. One of the products MAG designs,

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3 manufactures and installs is a modular American's with Disabilities Act  
4 ("ADA") compliant handicap access ramps, landings and stair systems.

5 10. Fleming was employed by the Evergreen Public Schools in  
6 Vancouver, Washington, as a senior construction manager from 1992 to 2008.  
7 Fleming was involved in the construction of new schools and portable  
8 classrooms. Fleming's position required that Fleming be experienced in ADA  
9 access requirements. During this time, Fleming observed that ADA  
10 requirements were becoming more and more stringent and construction  
11 utilizing wood products became difficult at best. Aluminum ADA ramps became  
12 the preferred alternative but production issues and delivery schedules were  
13 ongoing issues.  
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15 11. On or about July, 2008, Fleming worked as a consultant on a one  
16 year contract for a company exploring design and manufacturing options for an  
17 ADA access ramp system. While Fleming was under contract with the  
18 company, an ADA ramp system was designed and manufactured. The company  
19 offered Fleming a position as a sales representative to market the ADA ramp  
20 system but Fleming declined in order to pursue his own ADA ramp access  
21 system business.  
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23 12. Between January 2009 and October 2009, Fleming developed an  
24 ADA ramp system using polypropylene and universal guardrail/handrail  
25 systems. As part of this process, Fleming authored copyrighted drawings for  
26 the system (the "original drawings").  
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3 13. Parnell is the managing member of Samson. Fleming and Parnell  
4 had met a few months earlier at the annual Portland Boat Show whereby  
5 Parnell expressed an interest in an anchor release system developed by  
6 Fleming. The conversation between Fleming and Parnell led to a discussion of  
7 Flemings involvement in designing ADA access ramp systems.  
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9 14. Parnell indicated that he would be interested in the ADA access  
10 ramp business if an opportunity arose. As part of discussions, Fleming showed  
11 Parnell Fleming's original drawings for an ADA access ramp system.

12 15. Fleming and Parnell agreed to form a partnership ("the  
13 partnership") to design, manufacture and sell an ADA compliant access ramp  
14 system. Samson, managed by Parnell, was the managing general partner  
15 owning 51% of the partnership. MAG owned the remaining 49% of the  
16 partnership. had the responsibility of providing the initial funding, invoicing,  
17 collecting partnership income, paying partnership expenses, as well as  
18 maintaining licenses, insurance and reporting of sales and income taxes.  
19 MAG's responsibilities through Fleming, due to his expertise in the ADA access  
20 ramps, included allowing the partnership to use Flemings ADA access ramp  
21 design, including Fleming's copyrighted original drawings. Fleming was in  
22 charge of guiding the construction process, ensuring usability and code  
23 compliance as well as utilization of Fleming's contacts with mobile/modular  
24 builders and users, and guidance in the marketing and production of the ADA  
25 access ramp system.  
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3 16. In October 2009, MAG, through Fleming, worked with Samson to  
4 build a prototype product that would be evaluated for code compliance, on site  
5 construction, installation feasibility and marketability to mobile manufacturers  
6 and public agencies. The prototype was constructed and derived from the  
7 original drawings of the ADA access ramp which Fleming authored.

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9 17. Fleming solicited a bid from an engineer to provide technical  
10 drawings and construction details for the ramp system based on the original  
11 drawings Fleming authored and measurements of the prototype. Parnell didn't  
12 agree to the bid and offered to have Fleming's original drawings finalized by  
13 Parnell's own contactor, Frederickson, who Parnell said could provide the  
14 technical drawings at a lesser cost. In 2011, these technical drawings were  
15 completed (hereinafter, "the technical drawings") and derived from the Fleming  
16 authored original drawings of the ADA access ramp concept, and the prototype,  
17 which is itself a derivative of the original drawings...

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19 18. From Spring 2010 to December 2011 the partnership completed  
20 two phases of construction and fabrication. MAG supplied manufacturing labor  
21 for all projects manufactured in the Samson facility. MAG has not been  
22 compensated for the labor hours which, at \$35.00 per hour, totals \$52,000.00.

23 19. MAG provided the marketing for all projects, many projects being  
24 sold through Flemings contacts. MAG was not compensated for this work.

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26 20. The partnership paid MAG for installation of the ADA access  
27 ramps where installation was necessary. Samson admitted to the Department  
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3 of Labor & Industries the installer was a part owner of the business, however,  
4 MAG has not received its share of the partnership profits which are estimated  
5 to be approximately \$52,680.00.

6       21. On or about January, 2012, MAG and Fleming notified Samson of  
7 partnership inventory that MAG had in MAG's facility. The inventory value  
8 was estimated at \$22,956.00.

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10       22. On or about April, 2012, Samson seized the technical drawings.  
11 Samson, through Parnell's sister, Vicki Ballou, then filed copyright registration  
12 applications for many of the technical drawings without the consent or  
13 knowledge of Fleming or MAG.

14       23. MAG and Fleming withdrew from the partnership on or about  
15 May 29, 2012.

16       24. MAG and Fleming demanded a partnership accounting on or  
17 about July 27, 2012 which Defendants have refused to provide.

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19       25. The technical drawings were done on behalf of the partnership of  
20 Samson and MAG. To the extent that Parnell and Samson deny the existence  
21 of a partnership, then the technical drawings were unauthorized by Fleming  
22 and MAG, and, as derivatives, are owned exclusively by Fleming.

23       26. Plaintiffs are informed and believe and on that basis allege that  
24 the technical drawings do not add any creative expression, and that they  
25 merely formalize the prototype which is a derivation of Fleming's original  
26 drawings, and therefore are a clearly derivation of Fleming's original drawings.  
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3 27. Plaintiffs are informed and believe and on that basis allege that  
4 had Ms. Ballou disclosed the prior existing Fleming's original drawings to the  
5 Copyright Office when she filed for registration of the technical drawings,  
6 registration would have been denied, and in any case title does or should belong  
7 either to Fleming or to the partnership.

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9 28. Plaintiffs are informed and believe and on that basis allege that  
10 Samson seized the technical drawings from the partnership and wrongfully  
11 registered copyrights in many of the technical drawings as sole owner without  
12 the consent of Fleming or MAG. Fleming is the author of the ADA access ramp  
13 system concept and is the only person or entity entitled to copyright protection.

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15 29. Plaintiffs are informed and believe and on that basis allege that  
16 Samson wrongfully detains the partnership technical drawings. Samson is not  
17 holding the technical drawings for tax, assessment, or fine pursuant to a  
18 statute, nor is Samson holding the technical drawings under an execution or  
19 attachment against the partnership.

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21 30. In November 2012, Samson filed a Complaint for Replevin against  
22 Fleming and MAG, Clark County Superior, Civil Action No. 12-2-04160-5  
(hereinafter, "the State Court Action").

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24 31. In the State Court Action, by way of counterclaim, MAG and  
25 Fleming sought a declaratory judgment that the technical drawings belong to  
26 the partnership and that Fleming is entitled to any copyrights as author, or, in  
27 the alternative, if the State court found that the business relations between  
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Samson and MAG do not rise to the level of a general partnership, then Fleming, as author, be named the rightful owner of any copyrights to the ADA access ramp system drawings derived from his design and materials concept, and an equitable solution be determined for the uncompensated time and labor contributed by MAG and Fleming.

32. Samson by letter, using Parnell's attorney sister, Vicki A. Ballou, asserted that MAG and Fleming infringed Samson's copyrights and otherwise violated Federal Copyright Law, asserting, among other things, that MAG and Fleming is liable for willful copyright infringement and damages for up to \$150,000 for each work infringed.

33. In that copyright infringement letter, Ms. Ballou, for Samson, asserted infringement by MAG and Fleming, of

- a. Copyright Registration #VAu001098698;
- b. Copyright Registration #VAu0010989701; and
- c. Copyright Registration #VAu001098703.

34. Ms. Ballou, for Samson, contends that Plaintiffs use of Samson's drawings and designs, including modification, distribution, and copyright, constitutes copyright infringement.

35. Plaintiffs reasonably fear that their use of Fleming's original drawings, and any derivatives thereof, including prototypes and exemplars, to design, build and/or sell ADA ramp systems, to bid for the design, building and/or selling of ADA ramp systems, to contract for the design, building, or

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3 selling of ADA ramp systems, and/or to perform under contracts for the design,  
4 building, or selling of ADA ramp systems, will subject Plaintiffs based on  
5 Sampson's threats to suit for copyright infringement or other legal action in  
6 which copyright rights are asserted by Sampson.

7         36. By the same letter, Ms. Ballou also asserted that MAG and  
8 Fleming was liable to Samson for misappropriation of trade secrets.

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10         37. Plaintiffs are informed and believe and on that basis allege that  
11 the applications for these copyright registrations were filed by Ms. Ballou in  
12 April 2012.

13         38. Plaintiffs are informed and believe and on that basis allege that in  
14 the April 2012 copyright registration applications Ms. Ballou knowingly,  
15 intentionally and falsely (a) stated that the drawings were not based on pre-  
16 existing works; (b) stated that they were completed in 2009; (c) stated that they  
17 were owned by Samson.

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19         39. Plaintiffs are informed and believe and on that basis allege that  
20 The technical drawings submitted by Ms. Ballou are derived in substantial  
21 measures from Mr. Fleming's prior existing material, and thus the copyright  
22 registrations should not be enforceable.

23         40. Plaintiffs are informed and believe and on that basis allege that  
24 Mr. Fleming is the owner of the preexisting work drawings and thus is the  
25 owner by right and title to any derivative works, including the technical  
26 drawings submitted by Ms. Ballou.  
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3 41. The new material in the copyright registrations submitted by Ms.  
4 Ballou is not separable in substance from the preexisting work of Mr. Fleming.

5 42. The State Court Action cannot resolve, among other things, the  
6 issue of infringement or invalidity of copyrights. While it is possible that a  
7 State Court could resolve the issue of ownership of copyrights, subject to  
8 contractual obligation, it cannot determine ownership as a matter of law under  
9 the statute. Further, under the statute, a copyright assignment must be in  
10 writing to be enforceable. Fleming never assigned his copyrights, or the  
11 derivative works thereof.  
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13 43. Plaintiffs are informed and believe and on that basis allege that  
14 Fleming is the owner of the copyright(s) in all works and derivatives thereof,  
15 related to ramp designs, including but not limited to the copyright registrations  
16 asserted by Ballou.  
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18 44. Plaintiffs are informed and believe and on that basis allege that  
19 there is an actual, present and existing dispute regarding whether ownership,  
20 validity, and infringement of the copyright registrations asserted by Ballou,  
21 and the parties have genuine and opposing interests, that the opposing  
22 interests between the parties are direct and substantial, that a judicial  
23 determination of the validity, infringement and/ ownership of the copyright  
24 registrations will be final and conclusive, and that this suit is therefore ripe  
25 and appropriate for resolution by this Court.  
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**FIRST CLAIM FOR RELIEF—****DECLARATION OF NO COPYRIGHT INFRINGEMENT**

45. Plaintiffs re-allege every paragraph in this Complaint.

46. An actual controversy exists among Plaintiffs and Defendants as to whether the Plaintiffs infringe the copyright interests asserted by Defendants.

47. Plaintiffs seek a declaration from this Court that Plaintiffs do not infringe any copyright other proprietary right owned and/or alleged to be owned by Defendants; that Defendants do not own the copyrights asserted, and/or that the copyright registrations asserted are invalid.

48. These actual controversies warrant relief by declaring the rights and liabilities of the parties pursuant to 28 U.S.C. § 2201.

**SECOND CLAIM FOR RELIEF—****DECLARATION OF COPYRIGHT REGISTRATION INVALIDITY**

49. Plaintiffs re-allege every paragraph in this Complaint.

50. An actual controversy exists among Plaintiffs and Defendants as to whether the Plaintiffs infringe valid copyright interests asserted by Defendants.

51. Plaintiffs seek a declaration from this Court that the copyright registrations asserted are invalid.

52. These actual controversies warrant relief by declaring the rights

and liabilities of the parties pursuant to 28 U.S.C. § 2201.

### THIRD CLAIM FOR RELIEF—

#### DECLARATION OF COPYRIGHT OWNERSHIP

53. Plaintiffs re-allege every paragraph in this Complaint.

54. An actual controversy exists among Plaintiffs and Defendants as to whether the copyrights asserted by Defendants are owned by Plaintiff.

55. Plaintiffs seek a declaration from this Court that Defendants do not own the copyrights asserted, and that ownership in any copyrightable material in the drawings covered by Defendants' asserted copyright registrations is, by law and equity, owned by Fleming as the author of the original works. Fleming has not transferred or assigned his ownership in the copyright of the original works or the derivative technical drawings and as such title should be declared owned by Fleming, as the author.

56. These actual controversies warrant relief by declaring the rights and liabilities of the parties pursuant to 28 U.S.C. § 2201.

### FOURTH CLAIM FOR RELIEF—

#### BREACH OF FIDUCIARY DUTY

57. Plaintiffs re-allege every paragraph in this Complaint.

58. Plaintiffs are informed and believes and on that basis alleges that Samson, and Parnell through his dominion and control of Samson and thus of

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3 the partnership, have breached fiduciary duties owed to Plaintiffs by  
4 misappropriating and/or converting partnership assets, failing to account for  
5 use and disposition of partnership assets, and commingling with Samson's own  
6 accounts, partnership assets; that these breaches directly, foreseeably, and  
7 proximately caused damage to Plaintiffs.  
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10 **FIFTH CLAIM FOR RELIEF—**  
11 **DISSOLUTION OF PARTNERSHIP, ACCOUNTING,**  
12 **AND EQUITABLE DISTRIBUTION**

13 59. Plaintiffs re-allege every paragraph in this Complaint.

14 60. Plaintiffs pray that the Court order dissolution of the partnership  
15 between Samson and MAG, order an Accounting of all partnership assets,  
16 expenses, income and profits, and, in winding up, equitably distribute the  
17 partnership assets, profits, income and expenses as the Court deems just and  
18 equitable including, but without limitation, declaring and/or confirming  
19 ownership in all copyrightable drawings in and to Fleming.  
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22 **DEMAND FOR JUDGMENT & PRAYER FOR RELIEF**

23 WHEREFORE Plaintiffs pray for judgment against the Defendants as  
24 follows:

25 (a) That the Court declare pursuant to 28 U.S.C. § 2201 that  
26 Plaintiffs have not infringed the copyrights owned or claimed by Defendants; or  
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3 alternatively, or additionally, that the copyright registrations asserted by  
4 Defendants are invalid; or alternatively, or additionally, that the copyright  
5 registrations asserted by Defendants are owned by Plaintiffs;

6 (b) Such further and necessary relief as may be appropriate under  
7 either 28 U.S.C. § 2201 and Fed. R. Civ. P. 57 or as this Court deems just and  
8 proper as a matter of law or equity.

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10 (c) Granting judgment in favor of Plaintiffs against Defendants on all  
11 claims;

12 (d) Awarding actual, general and specific, consequential and  
13 incidental, damages against Defendants, jointly and severally, in an amount to  
14 be determined at trial;

15 (e) Awarding Plaintiffs exemplary, statutory, and/or treble damages  
16 against Defendants, jointly and severally;

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18 (f) Enjoining Defendants to conduct an Accounting for all assets,  
19 incomes, and expenses of any partnership deemed to exist between Plaintiffs  
20 and Defendants;

21 (g) Ordering the Dissolution of any partnership deemed to exist  
22 between Plaintiffs and Defendants;

23 (h) Equitably distributing to Plaintiffs all assets of any partnership  
24 deemed to exist between Plaintiffs and Defendants;

25 (i) Ordering Defendants to disgorge any and all assets of any  
26 partnership deemed to exist between Plaintiffs and Defendants that have been  
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commingled with assets of Defendants and/or misappropriated by Defendants;

(j) Enjoining Defendants from interfering, impeding, or otherwise obstructing Plaintiffs exploitation of Plaintiff's copyrights, including through contracts for ADA ramp systems;

(k) Awarding Plaintiff's its reasonable attorneys' fees and costs, including costs for experts, pursuant to State and Federal law;

(l) Awarding Pre- and post- judgment interest; and

(m) Entering such other and further relief as the Court deems appropriate under the circumstances.

#### JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues so triable in this action.

DATED January 29, 2013

/s/ Kurt M. Rylander

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